(57)

UNITED NATIONS

A

General Assembly

Distr.
LIMITED

A/CN.4/L.500
12 July 1994

Original: ENGLISH

INTERNATIONAL LAW COMMISSION
Forty-sixth session
2 May-22 July 1994

DRAFT REPORT OF THE INTERNATIONAL LAW COMMISSION ON THE WORK OF ITS FORTY-SIXTH SESSION

Rapporteur: Mr. Peter Kabastsi

CHAPTER III

THE LAW OF THE NON-NAVIGATIONAL USES OF INTERNATIONAL WATERCOURSES

CONTENTS

		Paragraphs	Page
A.	Introduction	1 - 9	
B.	Recommendation of the Commission	10	
C.	Tribute to the Special Rapporteur, Mr. Robert Rosenstock	11 - 12	
D.	Draft articles on the law of the non-navigational uses of international watercourses and resolution on confined transboundary groundwater	13 - [See A/CN.4/L.493 and Add.1 and 2]	

GE.94-63076 (E)

CHAPTER III

THE LAW OF THE NON-NAVIGATIONAL USES OF INTERNATIONAL WATERCOURSES

A. Introduction 1/

1. The Commission included the topic "The law of the non-navigational uses of international watercourses" in its programme of work at its twenty-third session (1971), in response to the recommendation of the General Assembly in resolution 2669 (XXV) of 8 December 1970.

2. The work begun by Rapporteurs Messrs. Richard D. Kearney, Stephen M. Schwebel, Jens Evensen and Mr. Stephen C. McCaffrey, was continued by Mr. Robert Rosenstock who was appointed Special Rapporteur for the topic at the Commission's forty-fourth session in 1992. 2/

3. At its forty-third session the Commission adopted on first reading an entire set of draft articles on the topic, 3/ which was transmitted, in accordance with articles 16 and 21 of the Commission's Statute, through the Secretary-General to Governments for comments and observations, with the request that such comments and observations be submitted to the Secretary-General by 1 January 1993.

4. At its forty-fifth session, the Commission considered the first report (A/CN.4/451) of the Special Rapporteur. The Commission also had before it the comments and observations on the draft articles received from Governments (A/CN.4/447 and Add.1-5).

5. At the conclusion of the debate, the Commission at its 2316th meeting, referred articles 1 to 10 to the Drafting Committee.

6. At its 2322nd meeting, the Commission considered the report of the Drafting Committee (A/CN.4/L.489). It contained the text of articles adopted by the

---

1/ For a fuller statement of the earlier background as well as a more detailed account of the Commission's work on the topic, see Yearbook ... 1985, vol. II (Part Two), pp. 68-71, paras. 268-278, Yearbook ... 1989, vol. II (Part Two), pp. 122-124, paras. 621-636; and report of the International Law Commission on the work of its forty-third session (Official Records of the General Assembly, Forty-sixth Session, Supplement No. 10) (A/46/10), pp. 152-153, paras. 29-35.

2/ See the Report of the International Law Commission on the work of its forty-fourth session (Official Records of the General Assembly, Forty-seventh Session, Supplement No. 10) (A/47/10), p. 130, para. 350.

3/ For the articles adopted on first reading see the report of the International Law Commission on the work of its forty-third session, (Official Records of the General Assembly, Forty-sixth Session, Supplement No. 10) (A/46/10), pp. 161-172.

Committee on second reading namely, articles 1 to 6 and articles 8 to 10. The Commission decided to defer action on the proposed draft articles to the next session.

7. At its present (forty-sixth) session, the Commission considered the second report of the Special Rapporteur (A/CN.4/462 and Corr.1) (Spanish only) at its 2334th to 2339th meetings. The second report following up the first report contained express proposals to delete the phrase "flowing into a common terminus" in article 2 of the draft articles; the inclusion in the draft articles of "unrelated" confined groundwaters or aquifers; the inclusion of a new paragraph (b) to article 16 to limit the harm to a notifying State from damage flowing exclusively from the failure of the notified State to respond to notification under articles 12 and 13 of the draft articles; addition of the word "energy" to article 21, paragraph 3; and a new article 33 dealing with dispute settlement.

8. At the 2339th meeting, the Commission decided to refer the draft articles covered in the second report to the Drafting Committee. It invited the Drafting Committee to proceed with the consideration of the draft articles, without the amendments introduced by the Special Rapporteur on unrelated confined groundwaters, and to submit suggestions to the Commission on how the Commission should proceed on the question of unrelated confined groundwaters.

9. The report of the Drafting Committee (A/CN.4/L.492 and Add.1) was presented to the Commission by its Chairman at its 2353rd meeting. The Commission considered the report at its 2353rd to 2356th meetings. On the basis of that report, the Commission adopted the final text of a set of 33 draft articles on the law of the non-navigational uses of international watercourses and a resolution on confined transboundary groundwater. In accordance with its Statute, the Commission submits the draft articles and the resolution to the General Assembly, together with a recommendation set out below (see para. 13 below).

B. Recommendation of the Commission

10. The Commission, in conformity with article 23 of its Statute, decided to recommend the draft articles on the law of the non-navigational uses of international watercourses and the resolution on confined groundwater to the General Assembly with a view to the elaboration of a convention by the Assembly or by an international conference of plenipotentiaries.

C. Tribute to the Special Rapporteur, Mr. Robert Rosenstock

11. At its 2356th meeting on 24 June 1994, the Commission, after adopting the text of the articles on the law of the non-navigational uses of international watercourses and the resolution on confined groundwater, adopted the following resolution by acclamation:

"The International Law Commission,

"Having adopted the draft articles on the law of the non-navigational uses of international watercourses and the draft resolution on confined transboundary groundwater,

"Wishes to express to the Special Rapporteur, Mr. Robert Rosenstock, its deep appreciation and warm congratulations for the outstanding contribution he has made to the preparation of the draft by his tireless efforts and devoted work and for the results achieved in the elaboration of draft articles on the law of the non-navigational uses of international watercourses and the draft resolution on confined transboundary groundwater."

12. The Commission seizes this opportunity to express its deep appreciation to the previous Special Rapporteurs, Messrs. Richard D. Kearney, Stephen M. Schwebel, Jens Evensen and Stephen C. McCaffrey for their outstanding contribution to the work on this topic.

D. Draft articles on the law of the non-navigational uses of international watercourses and resolution on confined transboundary groundwater

13. The text of, and commentaries to, draft articles 1 to 33 and the resolution as finally adopted by the Commission at its forty-sixth session are reproduced below.